IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

WEALTH TAX REFERENCE No 83 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF WEALTH-TAX

Versus

NALINKANT N. PORACHA

Appearance:

1. WEALTH TAX REFERENCE No. 83 of 1995

MR BB NAIK with MR MANISH R BHATT for Petitioner No. 1

NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE D.A.MEHTA

Date of decision: 08/11/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE D.A.MEHTA)

The following question has been referred under section 27(1) of the Wealth-tax Act, 1957 at the instance of the Commissioner for assessment year 1984-85:-

"Whether the Appellate Tribunal is right in law and on facts in holding that while valuing partner's interest under rule 2 of the W.T. Rules in the partnership firm, the entire amount of provision of tax without deducting therefrom the advance tax paid should have been deducted?"

2. We have heard Mr BB Naik for the applicant-revenue. Though served, none appears on behalf of the respondent-assessee.

3. At the time of hearing before the Tribunal, it was agreed between the parties that the controversy raised was covered by decision of this Court in the case of Commissioner of Wealth-tax vs. Ashok K. Parikh, 129 ITR 46 and hence the Tribunal followed the said decision and held that the entire amount of provision of tax, without reducing the same by the amount of advance tax paid, should be deducted while valuing the interest of a partner under Rule 2 of the Wealth-tax Rules.

4. The aforesaid decision of this Court in the case of Ashok K.Parikh has been impliedly disapproved by the Apex Court in the case of Bharat Hari Singhania vs. CWT, (1994) 207 ITR 1, wherein the Court has held that if provision for tax is shown in the column of liabilities in the balancesheet, the amount of advance tax already paid cannot be treated as an asset.

5. In view of the decision of the Apex Court, we hold that the Tribunal was not right in law that while valuing partner's interest under Rule 2 of the Wealth-tax Rules, the entire amount of provision of tax had to be deducted without reducing the same by the amount of advance tax paid. The question referred to us is, therefore, answered in the negative i.e. in favour of the revenue and against the assessee.

6. The Reference is disposed of accordingly with no order as to costs.

(M.S. Shah,J)

(D.A. Mehta,J)

zgs/-